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Objection Topic: Helena National Forest Blackfoot Travel Plan Final Environmental Impact Statement and associated Draft Record of Decision

Responsible Official: William Avey, Forest Supervisor, Helena National Forest

SUMMARY OF OBJECTION

The Helena National Forest's Blackfoot Travel Plan Final Environmental Impact Statement (FEIS) and the selection of Alternative 4 within the Draft Record of Decision (ROD) – specifically the proposed management decisions associated with the Stonewall (417) and Helmville Gould (467) Trails – do not comply with and are inconsistent with agency policy and will result in management decisions that fail to conserve and recover grizzly bears, lynx and wolverine to the degree required.

Specifically, the FEIS and ROD fail to:

- 1) Demonstrate that proposed management decisions for the Stonewall and Helmville Gould Trails comply with ORV executive orders and the Travel Management Rule (TMR) and minimize harassment and disruption of grizzly bears, lynx and wolverines and their habitat per ORV executive orders and TMR
- 2) Respond to and appropriately account for new information concerning grizzly bear occupancy south of Highway 200; evaluate impacts to grizzly bear linkage habitat south of Highway 200; and put forth proposed management decisions for the Helmville Gould trail that are consistent with current occupancy information, linkage habitat, and the Draft Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Conservation Strategy (Draft CS)

- 3) Demonstrate that new, and unevaluated, proposed management decisions associated with a motorized trailhead in the Stonewall Mountain area comply with IGBC habitat guidelines

As a remedy to these deficiencies, we recommend as a viable, achievable, and prudent measure, either the adoption of evaluated but not selected management decisions that will be consistent with these policies or further analysis that demonstrates the policy compliance and consistency of the proposed decision.

We raised these issues in our comment letter of March 11, 2013 on the Draft Environmental Impact Statement (DEIS) and January 7, 2011 (Scoping, WildEarth Guardians/WCPR).

ISSUES

- 1) The FEIS and ROD fail to demonstrate that proposed management decisions for the Stonewall and Helmville Gould Trails comply with ORV executive orders and TMR and minimize harassment and disruption of grizzly bears, lynx and wolverines and their habitat

As we stated in our comment letter, Executive Orders 11644 and 11989 require the Forest Service, when designating ORV trails and areas, to minimize harassment of wildlife, including grizzly bears, lynx, and wolverines, and significant disruption of their habitat. The TMR at 36 C.F.R. § 212.55(b) echoes this minimization requirement.

We restate that courts have found that the Forest Service has an affirmative obligation to actually show that it aimed to minimize damage when designating motorized trails and areas. Critically, the agency must demonstrate that proposed management decisions comply with ORV EO and TMR policy, rather than simply disclose anticipated impacts from the designation. Specifically, in this case the Forest Service must document and explain how the proposed management decisions for the Stonewall and Helmville Gould Trails met the criteria to minimize harassment of grizzly bears, lynx, wolverines and disruption of their habitat.

The Forest Service, in the FEIS and ROD, misstate ORV EO and TMR policy, and fail to document and explain how the proposed management decisions for the Stonewall and Helmville Gould trails meet the policies. First, the FEIS discussion (FEIS, p.505) of the 2005 Travel Rule and EO 11644 is vague, stating: “(M)inimization criteria were considered during the development of alternatives...” before launching into a discussion focusing exclusively on minimizing impacts from off-route motor vehicle use. While the impacts from off-route motor vehicle use can be extensive and worthy of being discussed when off-route vehicle use is being considered for authorization, it does not shed light on how the impacts from the motorized trail designations proposed were considered and then minimized. The minimization criteria, including a policy to locate areas and trails to minimize harassment of wildlife or significant disruption of wildlife habitat, apply to designations of trails for motor vehicle use, not just off-route use in areas, making the FEIS discussion less than clear and inadequate to satisfy the requirements of the EOs and Travel Rule.

What is clear, however, is the lack of evaluation and or evidence supporting the determination that the proposed Stonewall and Helmville Gould Trail decisions meet criteria and show compliance to minimize harassment and disruption of wildlife and their habitat. We found no coherent discussion in the FEIS

regarding the specific application of wildlife minimization criteria, and as such the designation of these trails for motorized use is inappropriate.

Instead of providing a thorough analysis of how it will minimize impacts from motorized use, the Forest Service includes the above garbled conversation in the FEIS, coupled with language in the ROD “clarifying” an interpretation of the term “minimize” (ROD, p. 1): “It is my interpretation that meeting Forest Plan standards, moving forest resources toward the goals and objectives described in the Forest Plan, and complying with all state and federal regulations will minimize effects on Forest resources.” Not only does this statement contradict the FEIS which claims that minimization criteria were applied to the alternatives, the interpretation incorrectly conflates the minimization duty with other substantive standards set forth by NFMA and the forest plan.

The minimization duty is a unique mandate and not satisfied through the use of other standards as a proxy. First, the Helena Forest Plan was not designed to minimize impacts as contemplated by the ORV EOs. Rather, the Forest Plan was developed under the separate and independent authority established in Section 6 of the NFMA which establishes that a Forest Plan is to provide for multiple use and sustained yield of goods and services from the National Forest System. Indeed the TMR specifically segregated the travel management process from the forest planning process in order to ensure that the minimization criteria were adequately addressed, something that had not been done in prior planning processes.¹ Promulgating a separate regulation to specifically manage motorized use on national forest lands indicates that providing for multiple use and sustained yield is not the same thing as minimizing motorized recreation impacts. The ORV Executive Orders and the Travel Management Rule place an additional layer of restrictions upon that multiple use mandate. Minimizing motorized recreational impacts is, in fact, an additional analysis that must be completed on a site specific level before designating motorized use.

Furthermore, by law, all action alternatives must be consistent with the Forest Plan, thereby making it impossible that mere compliance with the forest plan standards and guidelines would also necessarily mean that the minimization criteria were adequately applied. If we apply the FS’s logic that merely achieving consistency with the FP equates to minimizing impacts, we must then conclude that every action alternative presented in travel management plans necessarily minimize impacts, which on its face is absurd and ignores the fact that each substantive requirement of federal law is written differently and requires a different type or level of compliance. Clearly, an alternative that designates many more motorized routes near streams would have more impacts to water, fish, wildlife, and aquatic systems than an alternative that has few routes in these sensitive locations, even if both alternatives are consistent with the Forest Plan. Similarly, an alternative that designates many more motorized routes in ungulate habitat will have greater impact on wildlife habitat than an alternative that does not, even if both alternatives meet Forest Plan standards.

As opposed to using the Forest Plan as a proxy for compliance with the ORV EOs, the FEIS should have demonstrated that Alternative 4 was consistent with the minimization criteria. Instead, the FEIS and ROD provide evidence that the proposed decision, in particular the management proposed for the Stonewall and Helmville Gould Trails, will negatively affect grizzly bears, wolverine, lynx and their habitat, and provided no discussion as to whether these trails are necessary or what steps, if any, were

¹ The Federal Register notice promulgating the Travel Management Rule acknowledges that existing regulations and management efforts were insufficient to “continue to provide these opportunities [referring to motorized recreation] while sustaining the health of NFS lands and resources.” See 70 Fed. Reg. 68264, 68265 (Nov. 9, 2005).

or could be taken to minimize impacts, or even whether these trails were designed and sited to minimize impacts. The FEIS also demonstrates that Alternative 4 will have greater impacts than Alternative 3 on grizzly bears and their habitat, due to the “duration and distribution of disturbance” in the Stonewall Mountain area (FEIS, p.67). The FEIS concludes that Alternative 4, and the proposed management of the Stonewall Trail in particular, would “have greater potential to impacts bears” (FEIS, p.305) than Alternative 3 and provides no justification for how this decision meets the ORV EOs and TMR, instead relying on the FP standards as proxy. In fact, it is exactly this gradation of harm to grizzly bears that must be contemplated and minimized in the FEIS and the ROD to demonstrate compliance with the ORV EOs and TMR.

Similar flaws exist in the treatment of lynx and wolverine associated with proposed management of Stonewall and Helmville Gould Trails. In particular, the FEIS and ROD fail to acknowledge the high value of the Nevada Mountain area to these species – core lynx habitat and documented wolverine activity area – and fails to demonstrate how development of the Helmville Gould Trail will minimize harassment and disturbance of habitat security. The FEIS is particularly weak in discussing the impacts and application of the minimization criteria to wolverines known to use the Nevada Mountain area, which has been documented as a wolverine activity area of high use. We dispute the FEIS’ dismissal of motorized use impacts on wolverine, and refer the FS to the scientific studies cited in our comment letter, p. 11, which were not adequately addressed by the FS in the FEIS:

Wolverines are known to be sensitive to human disturbance, especially in active denning habitat each winter and spring (February through May). Closing roads and managing winter recreation are important means to maintain secure habitat for wolverines and other wildlife vulnerable to human disturbance; the absence of human disturbance that is afforded by refugia may be important for wolverine reproduction (Banci 1994; Copeland 1996). Researchers have found that wolverine natal dens have been located distant from public and private roads with a positive influence on successful reproduction (May 2007), while roads have been found to be negatively associated with wolverine occurrence (Rowland et al. 2003).

For lynx, the FEIS states that proposed management of the Helmville Gould Trail may serve to deter lynx movements during periods of heavy use, while acknowledging that “it is anticipated that future OHV use will continue to grow...and the development and designation of a motorized trail system with a series of connected routes is also likely to contribute to an increase in OHV use in the planning area” (FEIS, p. 314). Acknowledging that lynx will be impacted by increased use of the area and then acknowledging that use will increase, is not sufficient to comply with the minimization criteria of the executive orders and TMR. Instead, the FS must show that it has taken steps to minimize impacts from these designations, which has clearly not been done here.

Similarly, the Stonewall Area also supports lynx core habitat and wolverine activity areas. Yet, for lynx, switchbacks along the ridge of Stonewall will require removal of cover for prey species and “increase disturbance on the ridge that may serve to reduce travel along the ridge by lynx...” (FEIS, p.314). Again, the FEIS fails to demonstrate that proposed management of the Stonewall trail will result in minimization of harassment and disturbance to lynx, wolverine and their habitat.

The FEIS and ROD fail to respond to and appropriately account for new information concerning grizzly bear occupancy south of Highway 200; evaluate impacts to grizzly bear linkage habitat

south of Highway 200; and put forth proposed management decisions for the Helmville Gould trail that are inconsistent with occupancy information, linkage habitat, and the Draft CS.

In our comment letter we pointed out to the Forest Service that the status of grizzly bear occupation south of Highway 200 had changed. Commentors, including MT FWP, have provided evidence that the Odgen/Dalton Mountain Complex meets criteria for establishment of a Biological Activity Center (BAC).

The FEIS response to comments is not satisfactory in this case, postponing the potential recognition of this evidence for documentation in the Biological Assessment and consultation process. The FEIS and ROD need to account for this documented information in light of the proposed decision to develop the Helmville Gould Trail. Postponing an inevitable determination of grizzly bear occupancy in the Odgen/Dalton Mountain Complex fatally flaws the analysis and decisions rendered under this planning process, since much of the planning area either already qualifies or will qualify as a BAC in the future.

The FEIS and ROD also fail to sufficiently evaluate impacts to linkage habitat/zones for grizzly bears south of Highway 200, despite the FEIS' recognition that "the southern portion of the project area outside the recovery zone, may function as linkage habitat due to relatively low human use of the area..." (FEIS, p.309). Unfortunately the FEIS has nothing more to say about evaluation and impacts to linkage habitat, despite information that documents the presence of such habitat south of Highway 200. The proposed management decision for the Helmville Gould Trail will bisect this linkage zone with a fully reconstructed motorized trail; yet the FEIS and ROD are silent on the matter, despite briefly mentioning the issue and value of linkage habitat.

Furthermore, the proposed management decision related to Helmville Gould under Alternative 4 is not consistent with the Draft CS. Promulgating decisions that are not consistent with the Draft CS undermines the grizzly bear recovery policy and raises legitimate questions regarding the Forest Service's commitment as a future signatory to the final CS.

- 2) The Helmville Gould Trail falls under Zone 1 of the Draft CS. Habitat protection in zone 1 "will focus on managing motorized route densities within levels specified in current Federal and Tribal land use plans because these are known to be compatible with a stable to increasing grizzly bear population" (Draft CS, p. 4). Current obviously in this case means prior to any new motorized use allocations given that the entire premise of the strategy is to maintain use levels that have led to grizzly bear occupancy. The proposed Helmville Gould Trail development increases motorized access and use in the area and flies in the face of this strategy and, thus, must be removed from motorized designation. Additionally, Roadless areas "are to be maintained in their current status in terms of road access. This means that these areas will continue to serve as secure areas for grizzlies away from constant or prolonged human presence." (Draft CS. p. 117)

More broadly, the entire Blackfoot Travel planning process and many of the motorized decisions it proposes may not be consistent with policy efforts to recover and delist the NCDE grizzly bear. Provided that finalization of the Draft CS is due to occur in the fall of this year, to be followed by the development of an amendment to implement the habitat management policies, it may be appropriate for any portions of the Blackfoot Travel planning decision that negatively impact NCDE grizzly bear be postponed pending resolution of that process.

- 3) The FEIS and ROD fail to demonstrate that new, and unevaluated, proposed management decisions associated with a motorized trailhead in the Stonewall Mountain area comply with IGBC habitat guidelines

The FEIS and Alternative 4 introduce new proposed management decisions that were not addressed in the DEIS. In particular, the new motorized trailhead development, trail reconstruction and lengthening for the Stonewall Trail were not previously addressed. This development is occurring within the Grizzly Bear Recovery Zone and these new projects may not be compatible with IGBC guidelines. NEPA requires further analysis, and perhaps reconsideration, of the proposed management decision in order to fully disclose and meet compliance with the IGBC. Specifically, we are concerned that the development could be an infraction of IGBC policy regarding development and corresponding mitigation of impacts in order to achieve no net increase in development pressure on grizzly bear recovery.

HOW THE PROPOSED DECISION MAY BE IMPROVED

We request that the HNF take several actions to improve the proposed decision.

At a minimum, the FS must properly analyze the effects on grizzly bears, lynx, wolverine and their habitat applying the minimization criteria to the impacts on these species. The FS must use the best available science to determine if the proposed management decision is in compliance with the OHV EOs and TMR policy.

The FS must also appropriately recognize and incorporate available scientific information concerning grizzly bear occupancy south of Highway 200 and properly analyze the effects of the proposed management decision in light of this information. In addition, the FS must properly analyze the effects of the proposed management decision on grizzly bear linkage habitat south of Highway 200, using best available information concerning linkage areas. In addition, the FS must analyze the effects of the proposed management decision in light of the Draft CS.

Further analysis would not be necessary if the FS were to acknowledge and address grizzly bear occupancy south of 200 and modify the final management decision to accommodate the conservation and recovery needs of grizzly bears, wolverine and lynx and comply with existing policy. We are asking for the following site specific modifications. Specifically, in order to address the requirements of the BAC and minimization criteria:

For the Stonewall Mountain Trail and the Helmville Gould Trail Alternative 3 satisfies the legal obligations outlined above.

Alternative 3 for Stonewall Mountain Trail:

- 1) Would not result in trail reconstruction and the creation of switchbacks, increasing motorized use and resulting in the removal of whitebark pine
- 2) Would not increase access opportunities with a new parking lot
- 3) Sets seasonal restriction 9/1-6/30

Alternative 3 for the Helmville Gould Trail:


- 1) Would manage for non-motorized use from DCNST to Dalton

CONCLUSION

Thank you for your careful review and consideration of these objections. Should you have any questions pertaining to these objections, or how we can move forward in a productive manner, please feel free to contact us.

A handwritten signature in black ink that reads "Peter Nelson". The signature is written in a cursive style with a long horizontal line extending from the end.

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